

Remarks:

The above amendments and these remarks are responsive to the Office action dated October 3, 2007.

Claims 1–6 are pending in the application. In the Office action, claims 1–6 are rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Claims 1, 2, 5, and 6 are rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement requirement. Claims 1–6 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Claims 1 and 2 are rejected under 35 U.S.C. § 102(b) as being anticipated by the article "The Global Positioning System" and the article "Adept, Adapt, Adopt, Three hurdles for new products." Claims 3 and 4 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,251,294 to Abelow. Finally, claims 3–5 are rejected under 35 U.S.C. § 103(a) as being unpatentable over the article "Adept, Adapt, Adopt, Three hurdles for new products." Applicants traverse all rejections.

In view of the amendments above, and the remarks below, applicants respectfully request reconsideration of the application under 37 C.F.R. § 1.111 and allowance of the pending claims.

General Remarks

As an initial matter, applicants wish to address what seems to be an overall characterization of the present application by the Office. In the eyes of applicants, the Office seems to be issuing non-statutory subject matter as well as section 112 rejections that are not fully developed, perhaps as a general policy against broad business method/system applications. For purposes of the present application,

Page 6 - AMENDMENT
Serial No. 09/931,825
HP Docket No. 10010714-1
KH Docket No. HPCB 320

applicants request that the Office consider the rather large business consulting industry, including such large service providers as PriceWaterhouseCoopers, Deloitte & Touche, IBM, Accenture, Capgemini, Booz Allen Hamilton, McKinsey & Company, A.T. Kearney, Boston Consulting Group, and Bain & Company, to name a few. Innovators within this industry should not be precluded from patent protection simply because their skills and innovations may not be traditional. The policies behind the Patent laws (i.e., to encourage innovation in the technical arts) apply equally to this industry, and members of this industry should be rewarded for their innovations, so that they can offer their services without the worry of being copied by others without compensation. Applicants request that the Office keep these thoughts in mind when formulating its next action in response to applicants' presently submitted response.

Rejections under 35 U.S.C. § 101

Claims 1 and 2

As noted, claims 1 and 2 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Specifically, the Office action states that claims 1 and 2 "recit[e] a method that involves only humans and human intelligence in executing the claimed steps. A process type of statutory claim must be either (1) tied to a particular apparatus, or (2) operated to change materials to a different state or thing." [OA p. 3 (citing *In re Comiskey*, 499 F.3d 1365 (Fed. Cir. 2007))]

As an initial matter, applicants respectfully disagree with the Office action's characterization of *In re Comiskey*. In that case, the Federal Circuit stated only that "[t]he Supreme Court *has recognized only two instances* in which such a method [(i.e., an abstract idea that is embodied in, operates on, transforms, or otherwise involves

Page 7 - AMENDMENT
Serial No. 09/931,825
HP Docket No. 10010714-1
KH Docket No. HPCB 320

another class of statutory subject matter]] may qualify as a section 101 process”
In re Comiskey, 499 F.3d at *27 (emphasis added) (citing *Diamond v. Diehr*, 450 U.S. 175 (1981)). In other words, the Court did not limit patentability of abstract ideas that involve another class of statutory subject matter to the specific instances recited in the Office action, but rather merely indicated that the Supreme Court has only *recognized* those two specific instances so far. In other words, the Supreme Court did not preclude other instances of statutory subject where an abstract idea involves another class of statutory subject matter.

In *Comiskey*, the Federal Circuit went on to state the following: “Of course, process claims *not limited* to claiming an abstract concept or algorithm (i.e., a mental process) may not be subject to the same requirements.” *Id.* at *28 n. 12 (emphasis added). This is precisely the case here. Even if one or more of the steps of claim 1 may arguably be characterized as mental steps, claim 1 explicitly recites “*developing*, by the product team, *products* based on the entry vehicle and additional applications.” (Emphasis added) Examples of products that may be developed according to claim 1 are described in the specification of the present application:

As a non-limiting example, a particular business may be engaged in developing memory storage devices for electronics. . . . Memory storage devices are used in a wide range of applications including, but not limited to rockets, cars, computers, household appliances, and small consumer electronics. Furthermore, memory storage devices may take a large number of forms ranging in size, material, capacity, etc.

[Specification p. 5, lines 3–12]

As used in the specification, and as explicitly recited in claim 1, the term “developing” refers *not* to a mere mental step, but rather to taking “a specific

Page 8 - AMENDMENT
Serial No. 09/931,825
HP Docket No. 10010714-1
KH Docket No. HPCB 320

technological concept" and actually creating *products* corresponding to both "an entry vehicle" and "additional applications." Accordingly, claim 1 does not solely recite mental steps, and recites patentable subject matter for at least this reason.

Additionally, even if all the steps of claim 1 were legitimately characterized as abstract, or as mental steps, such steps *do* involve at least two other classes of statutory subject matter: a manufacture and a machine.

First, the process of claim 1 does "operate[] to change materials to a different state or thing," under the two part *Diehr* test referred to in the Office action. "The Supreme Court has defined 'manufacture' to mean 'the production of articles for use from raw or prepared materials by giving to these materials new forms, qualities, properties, or combination, whether by hand-labor or machinery'" *Id.* at *23 n. 10 (citing *Diamond v. Chakrabarty*, 447 U.S. 303, 308 (1980)). As discussed above, example products that may be developed according to the process of claim 1 include memory storage devices for electronics—clearly "manufactures" as defined by the Supreme Court. The process of claim 1 is just not limited to operating on a specific product.

Second, the process of claim 1 operates to transform a machine—here, the machine being a system defined by a product team associated with a business. As described in detail in the specification and broadly illustrated in Fig. 1, a product team [10] may include a scientific development group [12], a product development group [14], and a commercialization group [16]. The machine that is the product team [10] may include the development of new technology by the scientific development group, the development of reproducible marketable entry vehicles by the product development

group, and the commercialization of the entry vehicle and other products by the commercialization group. In addition to each group's individual contributions to the machine, the groups interact with each other in the exchange of information and in a joint decision process [18] to actually bring multiple products to market [21, 22]:

In contrast to product development processes in which the research, product development, and commercialization groups work together only when handing a project off from one group to the next, the present invention provides for these groups to work together to define an entry vehicle architecture. This entry vehicle architecture is designed to aid all of the groups by focusing the groups' efforts together in a joint decision process 18 to create an entry vehicle architecture 20, enabling the company to bring products 21 and product derivatives 22 from the conceptualization phase to the commercialization phase in a rapid and effective manner.

[Specification, p. 3, lines 15–23]

Accordingly, not only does the process of claim 1 recite more than a mere abstract idea, it also involves at least two patentable subject matter categories, and should be classified as such for at least the reasons discussed above. For at least the foregoing reasons, the rejection of claims 1 and 2 under 35 U.S.C. § 101 should be withdrawn.

Finally, applicants wish to address the Office action's characterization that allowance of claims 1 and 2 "would act to preclude any and all product development in the United States when the product is developed from existing technology." [OA p. 4] Applicants respectfully disagree with this characterization. Claims 1 and 2 do not attempt to recite "any and all product development . . . when the product is developed from existing technology," but rather only the product development implemented using the explicitly claimed process. Applicants are entitled to a broad scope of coverage if the claimed processes are novel and non-obvious. See MPEP § 2173.04. As

Page 10 - AMENDMENT
Serial No. 09/931,825
HP Docket No. 10010714-1
KH Docket No. HPCB 320

established below in response to the Office action's 102(b) and 103(a) rejections, the processes of claims 1 and 2 are patentably distinct over the cited prior art, regardless of how broad they may be construed.

Claims 1, 2, 5, and 6

The Office action also asserts that the processes of claims 1, 2, 5, and 6 do not produce a useful, concrete, and tangible result. Applicants respectfully disagree.

First, for an invention to be useful, it must generally satisfy the utility requirement of 35 U.S.C. § 101. As noted in the specification, the claimed invention(s) are effective in "streamlining the timeline between conceptualization of a technology and presentation of the technology in the form of a marketable product." [Specification p. 2, lines 23–25] The methods of claims 1, 2, 5, and 6 thus are useful in the field of product development.

Second, for a result to be tangible, the process must generally set forth a practical application of a Section 101 judicial exception (e.g., an abstract idea) to produce a real-world result. See *Gottschalk v. Benson*, 409 U.S. 63, 71–72 (1972). Again, applicants traverse the Office action's characterization of claims 1 and 2 as constituting only an abstract idea, and again refer to the specification where it is recited that "[t]he present invention provides a system for streamlining the timeline between conceptualization of a technology and presentation of the technology in the form of a marketable product." [Specification, p. 2, lines 23–25] The methods of claims 1, 2, 5, and 6 produce a real-world result "in the form of a marketable product."

Third, whether a result is concrete is dependent upon the level of skill in the art (i.e., whether one (or ones) skilled in the art can use the claimed method to derive the useful and tangible result). As discussed in the specification of the present application, the methods of claims 1, 2, 5, and 6 may be performed by a scientific development group [12], a product development group [14], and a commercialization group [16]. These groups, by definition, are skilled in their respective arts. As noted above:

[T]he present invention provides for these groups to work together to define an entry vehicle architecture. This entry vehicle architecture is designed to aid all of the groups by focusing the groups' efforts together in a joint decision process 18 to create an entry vehicle architecture 20, enabling the company to bring products 21 and product derivatives 22 from the conceptualization phase to the commercialization phase in a rapid and effective manner.

[Specification, p. 3, lines 17–23] Products 21 and product derivatives 22 are a concrete result.

Therefore, the methods of claims 1, 2, 5, and 6 produce useful, tangible, and concrete results, and therefore are directed to patentable subject matter. For at least the foregoing reasons, the rejection of claims 1, 2, 5, and 6 under 35 U.S.C. § 101 should be withdrawn.

Claims 3 and 4

Claims 3 and 4 also stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Specifically, the Office action asserts that "[t]he 'groups' claim[ed] are really people, which are not allowed to be claimed in apparatus type claims." [OA p. 5] Applicants respectfully disagree with the Office action's characterization of the law regarding what constitutes claiming human, and reiterate their arguments previously made in response to the previous Office action.

Claim 3 recites a "system for enabling a business to develop products," wherein the system includes a "research group," a "product development group," a "technological goal," an "entry vehicle," a "commercialization group" and a "joint decision process." The Office action improperly equates the research group, product development group and commercialization group as "human." While, as indicated in the specification, the groups *may be staffed* with scientists, engineers and/or business and marketing professionals, the groups themselves are not "human," but rather are man-made entities, or things, formed to accomplish specific goals. In addition to being staffed by scientists, engineers, and/or business and marketing professions, such groups also include the various tools these professionals use to accomplish their tasked goals.

As a non-exclusive example, in a research group, the scientific equipment that may be used for testing appropriate materials for use in a given project would equally be considered part of the research group, and are clearly not human. The computers that engineers use to create engineering drawings of products would equally be considered part of a product development group. Other tools, such as computers having email programs, permit individuals associated with a given group to interact with others within the group as well as individuals associated with other groups. Put simply, none of a research group, a product development group, and a product development group are "human."

As discussed in MPEP §2105, Congress has recognized that "the relevant distinction was not between living and inanimate things, but between products of nature, whether living or not, and human-made inventions." MPEP § 2105 (*citing Diamond v.*

Chakrabarty, 447 U.S. 303 (1980)). Research groups, product development groups and commercialization groups are not products of nature, but rather of human design.

MPEP § 2105 further indicates that a claimed invention is non-statutory if "the claimed invention as a whole encompasses a human being" (emphasis added). Claim 3 "as a whole" does not claim a human being (even if the various claimed groups may be staffed by humans), but rather, claims a "system for enabling a business to develop products" including a "research group," a "product development group," a "technological goal," an "entry vehicle," a "commercialization group" and a "joint decision process."

For at least the foregoing reasons, the rejection of claims 3 and 4 under 35 U.S.C. § 101 should be withdrawn.

Rejections under 35 U.S.C. § 112, first paragraph

Claims 1, 2, 5, and 6 stand rejected under 35 U.S.C. § 112, first paragraph "as failing to comply with the enablement requirement." [OA p. 6] Applicants disagree and submit that the claimed methods are enabled for one of ordinary skill in the pertinent art. The Office action specifically questions what is meant by entry vehicle applications [claims 1 and 5], what is meant by proving the technological concept for the entry vehicle application [claim 1], what is meant by "a narrow solution set, but broad and flexible enough to be applicable to additional applications" [claim 2], and what is meant by "narrow enough in scope to reduce the development time but broad enough to enable additional applications." [Claim 6] The Office action further states that "[u]pon a review of the specification for guidance on how the claimed steps are to be executed and performed, it is found that there is no further discussion provided." [OA p. 6] Applicants again refer to the following passage from the specification, where a concrete

Page 14 - AMENDMENT
Serial No. 09/931,825
HP Docket No. 10010714-1
KH Docket No. HPCB 320

example of the claimed processes is discussed in the context of actual products being developed according to the claimed processes:

As a non-limiting example, a particular business may be engaged in developing memory storage devices for electronics. The research group may initially be tasked with finding ways to reduce the size of the memory storage devices. According to the present invention, the research, product development, and commercialization groups jointly select a suitable entry vehicle architecture to provide focus for the product development effort. Memory storage devices are used in a wide range of applications including, but not limited to rockets, cars, computers, household appliances, and small consumer electronics. Furthermore, memory storage devices may take a large number of forms ranging in size, material, capacity, etc. Thus, the most effective entry vehicle would be one that is narrow enough in scope to limit the materials, configurations, and performance objective of the memory storage device to enable the research and product development groups to conduct research and do product development in a focused manner. However, the entry vehicle should also be broad enough in application to extend to other applications once the appropriate memory storage device has been developed. Thus, an appropriate entry vehicle might be to develop a memory storage device that is appropriate for use with a credit card, ATM card or other transactional card. By selecting a "memory card" as the entry vehicle architecture, the scope of scientific research has been limited to a specific size range and materials that are compatible with transactional cards. However, memory storage devices of this size and incorporating these materials will be useful for other future applications.

[Specification, p. 5, lines 3–25]

Applicants submit that at least the above passage properly enables claims 1, 2, 5, and 6. If the Office continues to disagree, applicants respectfully request the Office to develop its rejection in detail and in reference to the above cited passage from the specification, and remind the Office that "[t]he examiner should never make the determination [of lack of enablement] based on personal opinion." MPEP § 2164.05 (emphasis in original).

For at least the foregoing reasons, the rejection of claims 1, 2, 5, and 6 under 35 U.S.C. § 112, first paragraph should be withdrawn.

Page 15 - AMENDMENT
Serial No. 09/931,825
HP Docket No. 10010714-1
KH Docket No. HPCB 320

Rejections under 35 U.S.C. § 112, second paragraph

Claims 1–6 stand rejected under 35 U.S.C. § 112, second paragraph, "as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as his invention." [OA, p. 7]

Claim 1

With respect to claim 1, the Office action questions "what is being proved" with respect to the step "proving . . . the technological concept for the entry vehicle application." [OA p. 8] Applicants submit that one of ordinary skill in the pertinent art would understand what is required by this step.

"Prove" is defined as "to establish the truth or validity of by present of argument or evidence." The American Heritage Dictionary of the English Language (4th Ed.). Accordingly, proving a technological concept for an entry vehicle application requires establishing that the previously identified technological concept will validly work in the identified entry vehicle application. This may be analogized to the patent laws' concept of constructive reduction to practice. That is, the "proving" step of claim 1 does not require that an actual product corresponding to the identified entry vehicle application be physically constructed, but rather simply establishment that it is an *achievable* end result. This may be done through such things as presentation of engineering drawings, parts lists, the communication of manufacturing steps, etc.

The Office action additionally states that "[i]t is not clear if the claim requires any presentation step where products are presented to any customers," [OA p. 8] referring to the preamble of claim 1 (" . . . and presenting marketable products to a new or existing customer base"). Applicants disagree that inclusion of this phrase in the preamble

Page 16 - AMENDMENT
Serial No. 09/931,825
HP Docket No. 10010714-1
KH Docket No. HPCB 320

renders the claim indefinite. Nevertheless, in the interest of furthering prosecution of the present application on the merits, applicants presently amend claim 1 to omit the referenced phrase. Claim 1 thus now recites "[a] method performed by a product team within a business for developing marketable products to fit the needs of multiple markets."

Claims 2, 4, and 6

Similar to the Office action's rejection under 35 U.S.C. § 112, first paragraph, the rejection of claims 2, 4, and 6, under § 112, second paragraph, questions what is meant by "narrow enough in scope to reduce development time" and "broad and flexible enough to be applicable to additional applications." [OA p. 8] Applicants refer to their response above (see p. 14) and direct the Examiner to the specification at page 5, lines 3-25, for a detailed and concrete example of how the methods and systems according to the present application may facilitate the claimed limitations.

Claim 3

With respect to claim 3, the Office action questions what is being claimed "because nothing recited in the body of the claim defines any structure to any kind of system/apparatus." [OA p. 9] Applicants respectfully request that the Examiner provide case law supporting the Office action's assertion that system claims must be defined by "structure." In an attempt to adequately address the rejection, applicants provide the following remarks in response to the specific statements from the rejection:

1. "'Goals' are not real world things" [OA p. 9]

Applicants disagree that goals are not real world things. The word "goal" is a *noun* and is defined as "[t]he purpose toward which an endeavor is directed; an objective." The American Heritage Dictionary of the English Language (4th ed.).

2. "The 'process' claimed is also not a real world thing." [OA p. 9]

Applicants disagree that a joint decision process is not a real world thing. The word "process" is a *noun* and is defined as "[a] series of actions, changes, or functions bring about a result." The American Heritage Dictionary of the English Language (4th ed.).

3. "The claimed 'groups' are really people, and they cannot define an apparatus." [OA p. 9]

Applicants direct the Examiner to their remarks above regarding the Office action's 35 U.S.C. § 101 rejections. Again, while possibly being staffed by humans, the claimed groups are not humans themselves.

Claim 5

With respect to claim 5, the Office action questions what statutory class of invention is claimed. The Examiner's "best understanding" that it is a process claim is correct. Applicants traverse the rejection that claim 5 is indefinite; however, to advance prosecution on the merits, applicants presently amend claim 5 to positively recite a step of "selecting, by the product development group together with the research group and commercialization group, an entry vehicle application."

For at least the foregoing reasons, the rejection of claims 1–6 under 35 U.S.C. § 112, second paragraph should be withdrawn.

Page 18 - AMENDMENT
Serial No. 09/931,825
HP Docket No. 10010714-1
KH Docket No. HPCB 320

Rejections under 35 U.S.C. § 102(b)

Claims 1 and 2

Claims 1 and 2 stand rejected under 35 U.S.C. § 102(b) as being anticipated by the article "The Global Positioning System."

Applicants presently amend independent claim 1 to more clearly indicate that the claimed method is performed by a product team within a business. As indicated in the Office action itself, "The Global Positioning System," on the other hand, discloses that development of what the Office action characterizes as the entry vehicle application (the military use of the GPS system) was performed by the United States government, [see OA p. 11] and that development of what the Office action characterizes as the additional applications (civilian use of the GPS system) was performed by private industry. [See OA p. 11]

As mentioned, presently amended claim 1 requires all steps to be performed by a single entity that is "a product team within a business." "The Global Positioning System" fails to disclose this limitation, and therefore fails to disclose each and every limitation of independent claim 1 and its dependencies. The rejection should therefore be withdrawn. Furthermore, applicants submit that the article "The Global Positioning System" is not an enabling reference. The article merely tells a story without the necessary documentation of how one of ordinary skill in the art would implement the presumed methods cited in the Office action.

Claims 1 and 2 further stand rejected as being anticipated by the article "Adept, Adapt, Adopt, Three hurdles for new products" (hereinafter "AAA").

Page 19 - AMENDMENT
Serial No. 09/931,825
HP Docket No. 10010714-1
KH Docket No. HPCB 320

"AAA" however, fails to disclose each and every limitation of independent claim 1. First, "AAA" fails to teach or suggest "identifying, by the product team, a specific technological concept to develop into a product." Rather, "AAA" only discloses that the Wright Laboratory developed technology for "a military purpose" (see p. 815), and makes no mention of an actual product that was developed.

"AAA" additionally fails to teach or suggest "developing, by the product team, products based on the entry vehicle and additional applications." As just mentioned, "AAA" makes no mention of development of actual products, and instead only refers to the Wright Laboratory's development of technology and discovery of a medical breakthrough. "AAA" provides no indication that actual products were ever developed by the Wright Laboratory.

All of the anecdotes presented in the "ADAPT" section of "AAA," refer to instances where an individual or entity simply stumbled upon or discovered a new use for an existing technology. In contrast, the methods and systems according to the present application are specifically designed to facilitate the development of multiple products based on a given technological concept, including both an entry vehicle and additional products. None of the anecdotes in "AAA" describe situations where a product team set out initially with the intent to develop multiple products, and instead, as mentioned, simply describe situations where a new use for a known technology was discovered or stumbled upon.

Furthermore, like the article "The Global Positioning System," the article "AAA" is not an enabling reference. As mentioned, the article merely provides anecdotes without the necessary documentation of how one of ordinary skill in the art would implement the presumed methods cited in the Office action.

For at least the foregoing reasons, the rejection of claims 1 and 2 under 35 U.S.C. § 102(b) should be withdrawn.

Claims 3 and 4

Claims 3 and 4 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,251,294 to Abelow.

As indicated in the Office action, "the examiner has treated the claims as reciting nothing more than 3 groups of people that are able to do certain things. The claimed 'goals' and 'process' are not defining anything that is tangible and real. Weight is not given to these limitations in these system claims." [OA p. 12] As an initial matter, applicants direct the Examiner to applicants' discussion above in response to the Office action's 35 U.S.C. § 112, second paragraph rejection of claim 3, and submits that the technological goal, the entry vehicle product architecture goal, and the joint decision process are positive claim limitations that must be found in the prior art to be anticipated. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Vandergaal Bros. v. Union Oil Co. of Calif.*, 814 F.2d 628, 631 (Fed. Cir. 1987); see MPEP § 2131. The Office action does not even attempt to find these limitations in the cited reference, and applicants review of the reference also fails to find these limitations. Applicants respectfully direct the Examiner's attention to MPEP § 2143.03 where it

Page 21 - AMENDMENT
Serial No. 09/931,825
HP Docket No. 10010714-1
KH Docket No. HPCB 320

states that "A claim limitation which is considered indefinite cannot be disregarded." Applicants recognize that section 2143.03 of the MPEP relates to obviousness rejections; however, applicants believe the requirement equally applies to anticipation rejections as well.

Applicants therefore submit that the Examiner has failed to establish a prima facie case of anticipation with respect to claims 3 and 4, and request that the rejection be withdrawn.

Rejections under 35 U.S.C. § 103(a)

Claims 3–6 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the article "AAA."

Claims 3 and 4

Regarding claims 3 and 4, the Office action states that "the only things claimed that are real world are the 'groups.'" [OA p. 14] Applicants again submit that the article "AAA" is not an enabling reference. Applicants also refer the Examiner to applicants' discussion above in response to the Office action's 35 U.S.C. § 112, first paragraph rejection of claim 3, and submit that the technological goal, the entry vehicle product architecture goal, and the joint decision process are all three positive claim limitations that must be found in the prior art to be found obvious. Again, applicants respectfully direct the Examiner's attention to MPEP § 2143.03 where it states that "A claim limitation which is considered indefinite cannot be disregarded. "The cited article fails to teach or suggest at least these limitations and therefore cannot render claims 3 and 4 obvious.

Page 22 - AMENDMENT
Serial No. 09/931,825
HP Docket No. 10010714-1
KH Docket No. HPCB 320

Claims 5 and 6

Regarding claims 5 and 6, the Office action states that "[o]ne of ordinary skill in the art . . . would have found it obvious to have these 3 groups [(the research, product development, and commercialization groups recited in the preamble of claim 5)] get together to decide on the entry vehicle application so that more input is gathered and more experienced people are in on the decision making process." [OA p. 15] Applicants traverse the rejection. Nevertheless, in the interest of furthering prosecution, applicants presently amend claim 5 to add the limitation of "identifying additional applications for the technology developed by the research group."

Applicants have studied the cited article and respectfully submit that it fails to teach or suggest all of the claimed limitations of presently amended claim 5. Applicants additionally submit that the article "The Global Positioning System" fails to teach or suggest each and every element of amended claim 5 for at least reasons similar to those discussed above in response to the Office action's § 102(b) rejection of claim 1.

For at least the foregoing reasons, the rejections of claims 3–6 under section 103(a) should be withdrawn.

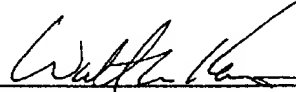
Conclusion

Applicants believe that this application is now in condition for allowance, in view of the above amendments and remarks. Accordingly, applicants respectfully request that the Examiner issue a Notice of Allowability covering the pending claims. If the Examiner has any questions, or if a telephone interview would in any way advance prosecution of the application, please contact the undersigned attorney of record. If the Examiner believes the present application to contain patentable subject matter not

presently claimed, applicants expressly request that the Examiner telephone the undersigned attorney of record to share his thoughts.

Respectfully submitted,

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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this correspondence is being facsimile transmitted to Examiner D. Ruhl, Group Art Unit 3629, Assistant Commissioner for Patents, at facsimile number (571) 273-8300 on December 27, 2007.



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